

#87 DAC
PATENT

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Mahendra I. Amin, et al

Application No. 07/312,401

Patent No.: 4,902,683

Filed: February 17, 1989

Issue Date: February 20, 1990

Attorney Docket No.: 4121FW1

Title: CRYSTALLINE CEPHALOSPORIN
HYDROHALIDE SALTS

Assignee: Pharmacia & Upjohn Company

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RENEWED PETITION under 37 C.F.R. §1.378(e)

Sir:

This Renewed Petition under 37 C.F.R. §1.378(e) is submitted in response to the initial Decision on Petition under 37 C.F.R. §1.378(b) mailed by the U.S. Patent and Trademark Office ("PTO") on May 12, 2004 (hereafter "Decision"). This Renewed Petition is submitted on behalf of The Upjohn Company and its successor companies, Pharmacia & Upjohn and Pfizer (hereafter

“Upjohn”) and is accompanied by the \$130 petition fee under 37 C.F.R. §1.17(h) and the Supplemental Declarations of Julie K. Lyons, Deborah A. Tucker, Thomas A. Wootton and Edward F. Rehberg as well as the Declarations of Elizabeth Bevier and Paula G. Stone. In addition, Upjohn continues to rely on the original Declarations of Julie K. Lyons, Deborah A. Tucker, Thomas A. Wootton and Edward F. Rehberg submitted with the original Petition to Accept Delayed Payment of Maintenance Fee mailed on April 2, 2004.

By this Renewed Petition, Upjohn respectfully requests the PTO to reconsider the previous dismissal of its original Petition in light of the newly submitted declarations and statements. It is Upjohn’s belief that the new declarations in conjunction with the previously submitted declarations more than adequately answer all six of the reasons given by the PTO in its initial Decision for not granting the original Petition. It is also Upjohn’s belief that the new and original declarations establish that the failure to timely pay the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 was entirely unintentional and unavoidable.

1. The Error that Caused the Delay at Issue

In response to the first reason given in the initial Decision for dismissing the original Petition, Upjohn cites the Declarations of Paula G. Stone and Elizabeth Bevier and the Supplemental Declaration of Julie K. Lyons. The error that caused the delay in the payment of the maintenance fee has been described in much greater detail in these additional declarations. Ms. Lyons recalls that U.S. Patent No. 4,902,683 was either the first or one of the first pharmaceutical extension requests that she had encountered after more than six years in the role of U.S. Docketing Clerk for Upjohn. (Supplemental Declaration of Julie K. Lyons ¶ 6.) In encountering this new docketing issue, she did what she had been trained to do under the

circumstances, she called the vendor of the docketing software then in use at Upjohn. (Lyons Supp. Decl. ¶¶ 6, 11.) Specifically, she called Elizabeth Bevier at Master Data Center, who Ms. Lyons viewed as the authority on correct usage of the PCMaster docketing software. (*Id.* ¶¶ 5, 9, 13.)

Ms. Lyons recounts this key conversation in some detail in her Supplemental Declaration. (*Id.* ¶ 6.) She asked Ms. Bevier for an instructional sheet describing how to docket a U.S. pharmaceutical extension. (*Id.*) Ms. Bevier told her that she didn't need an instructional sheet. (*Id.*) Instead, all she needed to do was enter a "Code J" designation (corresponding to a pharmaceutical extension) in the Case Type field for the patent. (*Id.*) Ms. Lyons recalls asking Ms. Bevier whether a duplicate docketing record needed to be opened like Deborah Tucker, the foreign docketing clerk at Upjohn, did for foreign applications. (*Id.*) Ms. Bevier responded that no duplicate record was needed, only the entry of a "Code J" designation in the original record. (*Id.*)

Ms. Lyons followed these instructions from Ms. Bevier of Master Data Center exactly in docketing both the pharmaceutical extension request and its grant for this patent. As shown on the screen shots for the PCMaster data base record for this patent attached to Ms. Lyons' Supplemental Declaration, she entered a "Code J" designation for this patent. (*Id.*, Ex. A.) As shown by the selections offered by the pull down menu for the Case Type field, this was the most appropriate option offered by the PCMaster software. (*Id.* ¶ 4, Ex. B.) She also entered a PEX designation in the Actions screen, as instructed by Ms. Bevier, which allowed Ms. Lyons to manually change the expiration date to the new extended date once the extension request was granted. (*Id.* ¶¶ 6, 8.)

Most significant is the fact that nothing in the PCMaster data base record indicated that there was the slightest problem with the procedure followed by Ms. Lyons. (*Id.* ¶¶ 7, 9.) For example, no popup screen appeared to warn Ms. Lyons that the annuity fees for this case would not be paid due to the entry of the “Code J” designation. To the contrary, all appeared to be as it should be. The next tax due date continued to show August 20, 2001, the date on which the 11-½ year maintenance fee was due without the payment of surcharges. (*Id.* ¶ 9.) The status of the case continued to show “Granted” rather than “Inactive.” (*Id.*) Absolutely nothing in the data base record itself suggested the maintenance fee would not be paid on time. (*Id.*)

The Declaration of Paula G. Stone, the Vice President of Operations of Master Data Center, establishes that it was the entry of the “Code J” designation by Ms. Lyons that caused Master Data Center to not pay the 11-½ year maintenance fee when it was due. (Declaration of Paula G. Stone ¶ 3.) Instead, unbeknownst to Ms. Lyons at the time, the proper procedure would have been the creation of a duplicate record in which the “Code J” designation would be entered, leaving the Case Type field in the original record unaltered. (Stone Decl. ¶ 4.) This would have caused Master Data Center to pay the maintenance fee based on the original record without the “Code J” designation. (*Id.*)

Ms. Lyons’ complete good faith in following the procedure she did is supported in two ways. First, Ms. Lyons memorialized the procedure that Ms. Bevier had told her to follow in the docketing procedures manual that Ms. Lyons maintained and updated for Upjohn. (Lyons Supp. Decl. ¶ 10.) This contemporaneous entry in the procedures manual establishes without question that Ms. Lyons believed that this was the appropriate procedure to follow with respect to the docketing of U.S. pharmaceutical extensions. And as stated by Ms. Lyons in her Supplemental

Declaration, she continued to believe in the correctness of this procedure until she became aware in 2004 of the lapse of U.S. Patent No. 4,902,683. (*Id.*)

Second, the Declaration of Elizabeth Bevier confirms that since 1984, she has “been responsible for assisting clients of Master Data Center in the correct usage of PCMaster docketing software to insure the proper payment of maintenance fees and annuities in patent and trademark applications.” (Declaration of Elizabeth Bevier ¶ 1.) The Supplemental Declarations of Ms. Lyons and Ms. Tucker likewise confirm that they viewed Ms. Bevier as the final authority on how to properly docket dates using the PCMaster software. (Lyons Supp. Decl. ¶¶ 5, 9, 13; Supplemental Declaration of Deborah A. Tucker ¶ 6.) Thus, Ms. Lyons contacting Ms. Bevier and relying on her advice concerning docketing procedures using PCMaster was entirely reasonable.¹

The first reason given in the initial Decision indicates that Ms. Lyons’ supervisor had told her something completely different about docketing pharmaceutical extensions. This statement is not correct in several respects. First, Ms. Tucker did not become Ms. Lyons’ supervisor until September 1998, which was subsequent to both occasions on which Ms. Lyons would have accessed the database record for U.S. Patent No. 4,902,683. (Tucker Supp. Decl. ¶ 1; Lyons Supp. Decl. ¶¶ 13, 16.) Instead, Mr. Lawrence Welch, the head patent attorney at Upjohn, was her supervisor during this relevant time frame from June 1996 to July 1998. (Lyons Supp. Decl. ¶ 13.) Second, neither Ms. Lyons nor Ms. Tucker has any recollection of discussing with each other the proper procedure for docketing U.S. pharmaceutical extensions using PCMaster during the relevant time period or at any time prior to 2004. (Lyons Supp. Decl. ¶ 16; Tucker Supp.

¹ In the interest of completeness, Upjohn inquired whether Ms. Bevier had any recollection of the telephone conversation with Ms. Lyons recounted in Ms. Lyons’ Supplemental Declaration. Not surprisingly, since Ms. Bevier

Decl. ¶ 3.) This is as expected since Ms. Tucker's expertise at the time was in foreign docketing, not U.S. docketing.² (Tucker Supp. Decl. ¶ 3.)

2. Ms. Lyons' Training

The second reason stated in the initial Decision for dismissing the original Petition is the lack of description concerning Ms. Lyons' training. Ms. Lyons' training in U.S. patent docketing in general and with respect to the use of PCMaster specifically is now detailed in her Supplemental Declaration. She became familiar with U.S. patent application files and due dates from her decade of serving as an administrative assistant to various patent attorneys at Upjohn. (Lyons Supp. Decl. ¶ 11.) When she assumed responsibility for U.S. patent docketing at Upjohn in 1990, Ms. Lyons received intensive, personalized training in all aspects of proper docketing procedure. (*Id.*) When Upjohn converted to the PCMaster docketing software in December 1994, she received training on the proper use of PCMaster in at least three distinct formats:

- She participated in an initial training session conducted by Master Data Center in Kalamazoo at the time of the conversion. This initial session lasted at least two days and left her "generally familiar with the use of the PCMaster software." (Lyons Supp. Decl. ¶ 12.)

fields hundreds of calls from clients of Master Data Center in a typical week, Ms. Bevier cannot recall the conversation with Ms. Lyons concerning U.S. pharmaceutical extensions. (Bevier Decl. ¶ 3.)

² Upjohn regrets any confusion that paragraph 11 of Ms. Lyons' original Declaration may have caused. As of 2004, Ms. Tucker was Ms. Lyons' supervisor, but not during the relevant time from June 1996 to July 1998. Also, the reference to the "belief" expressed by Ms. Tucker in 2004 concerning the proper way to handle an extension request referred to foreign extension requests. Indeed, as stated in Ms. Tucker's Supplemental Declaration, prior to 2004, she "did not know the proper way to docket a U.S. pharmaceutical patent term extension using PCMaster because it was outside of my area of direct responsibility, foreign docketing." (Tucker Supp. Decl. ¶ 3.) Thus, there is no evidence that any conversation took place between Ms. Lyons and Ms. Tucker during the relevant time frame in which Ms. Tucker expressed the view that U.S. pharmaceutical extensions, as opposed to foreign extensions, required the creation of a duplicate record in which the "Code J" designation should be entered.

- She attended two more training sessions with Ms. Tucker at Master Data Center's location in Southfield, Michigan – one basic and one advanced. (*Id.*)
- She attended at least two user conferences with Ms. Tucker sponsored by Master Data Center. These user conferences lasted two days and included “lectures, hands-on training sessions, breakout sessions on specific topics and question and answer opportunities.” (*Id.*)

As stated in their Supplemental Declarations, neither Ms. Lyons nor Ms. Tucker recalls the subject of U.S. pharmaceutical patent extensions being a specific topic covered at these sessions. (Lyons Supp. Decl. ¶ 12; Tucker Supp. Decl. ¶ 4.) An important principle that Ms. Lyons took away from her general training on U.S. docketing was that she should not engage in interpretation or make any decisions concerning docketing that were close calls. (Lyons Supp. Decl. ¶ 11.) Instead, she was trained to confirm her actions in such close cases with the most knowledgeable person. (*Id.*) For legal issues, she was trained to ask one of the Upjohn patent attorneys, preferably the head attorney at the time. (*Id.*) And for issues relating to the proper use of docketing software, she was trained to ask the most knowledgeable person at the software vendor. (*Id.*) Ms. Lyons followed this principle in her erroneous docketing of the pharmaceutical extension for U.S. Patent No. 4,902,683. Since the docketing of this request represented the first or one of the first such extensions she had encountered, she did not guess on the appropriate course of action. Instead she contacted that most knowledgeable person with respect to the PCMaster software, Ms. Bevier. (*Id.* ¶¶ 5, 13.) She then followed the instructions she received from Ms. Bevier and documented them in the Upjohn docketing procedures manual so that she would know how to handle pharmaceutical term extensions in the future. (*Id.* ¶ 10.)

As noted in her Supplemental Declaration, Ms. Lyons herself believes that she was well trained for her position as U.S. Docketing Clerk. (*Id.* ¶ 14.) In addition, both Ms. Tucker and Mr. Thomas Wootton, the current head patent attorney at Upjohn in Kalamazoo, share this belief regarding the sufficiency of her training. (Tucker Supp. Decl. ¶ 5; Supplemental Declaration of Thomas A. Wootton ¶ 2.) In the words of Mr. Wootton, “Julie has always been viewed by me and others at Upjohn as a highly conscientious, competent and trusted employee. She was the most knowledgeable and experienced person at Upjohn concerning U.S. docketing procedures.” (Wootton Supp. Decl. ¶ 2.) Thus, the docketing training that Ms. Lyons received, both generally and with respect to the use of PCMaster, was much more than sufficient such that Upjohn’s reliance on her to carry out the U.S. patent docketing function was perfectly reasonable.

3. The Conflicting Treatment of the “J” Entry

It appears from the initial Decision that the PTO is of the belief that at the relevant time when Ms. Lyons was docketing the pharmaceutical term extension for U.S. Patent No. 4,902,683, she and Ms. Tucker had, or should have had, a conversation in which Ms. Tucker told her conflicting information concerning the entry of a “Code J” designation in PCMaster. As detailed in the Supplemental Declarations of Ms. Tucker and Ms. Lyons, no such conversation took place. (Lyons Supp. Decl. ¶ 16; Tucker Supp. Decl. ¶ 3.) Nor would one expect such a conversation to take place given the indifferent responsibilities. In the relevant time frame from June 1996 when the term extension was requested until July 1998 when the term extension was granted, Ms. Lyons recalls discussing the proper docketing of U.S. pharmaceutical term extensions with only one person, Elizabeth Bevier of Master Data Center. (Lyons Supp. Decl. ¶¶ 13, 16.) Ms. Tucker’s memory on this point is very clear as well. As she stated in her

Supplemental Declaration: “I am very confident that I never told Julie Lyons that ‘the proper course of action’ for a U.S. pharmaceutical patent term extension was to create a new record, place a ‘J’ in the appropriate field and leave the original record unmodified. Because my primary responsibilities were in the docketing of foreign patent applications, I did not know at the time how a U.S. pharmaceutical patent term extension should be handled in PCMaster.” (Tucker Supp. Decl. ¶ 3.)

In reviewing the original Petition, Upjohn can now understand how the original Declaration of Ms. Lyons may have left the impression that Ms. Lyons and Ms. Tucker had discussed conflicting procedures for docketing a U.S. pharmaceutical extension request in the pre-2004 time frame. However, the conversation described in paragraph 11 of Ms. Lyons’ original Declaration took place on March 8, 2004, as stated, and the “inconsistent instructions from Master Data Center” referred to different instructions received by Ms. Lyons from Master Data Center regarding the handling of U.S. applications as opposed to the instructions received by Ms. Tucker concerning foreign applications.

4. Access to the PCMaster Data Base

Ms. Lyons’ Supplemental Declaration addresses the issue of how many employees at Upjohn had access to the PCMaster data base. While attorneys at Upjohn had read-only access to the data base, only Ms. Lyons, Ms. Tucker and the docketing clerk for trademarks had the password authority to create or alter records in PCMaster. (Lyons Supp. Decl. ¶ 17.)

5. Copies of the PCMaster screen

Copies of the PCMaster screens for the data base record for U.S. Patent No. 4,902,683 are attached as exhibits to Ms. Lyons' Supplemental Declaration. (*Id.*, Ex. A-D.) These screen shots are from the archived copy of the PCMaster data base that was in use during the relevant time frame from June 1996 through July 1998.

6. Supervision of Ms. Lyons, etc.

The final reason given in the initial PTO Decision for dismissing Upjohn's original Petition is that "no statement has been proffered as to the degree of supervision of Ms. Lyons' work, examples of other work functions carried out by her, and checks on her described work which were used to assure proper execution of her assigned tasks."

The Supplemental Declarations of Ms. Lyons, Ms. Tucker and Mr. Wootton describe in detail the supervision of Ms. Lyons during the entire period that she acted as the U.S. Docketing Clerk. (Lyons Supp. Decl. ¶¶ 11, 13, 14; Tucker Supp. Decl. ¶ 5; Wootton Supp. Decl. ¶ 3.) At first she was supervised by the experienced docketing clerk who initially trained her, Nancy Hord. (Lyons Supp. Decl. ¶ 11.) As would be appropriate, Ms. Hord's level of supervision of Ms. Lyons was quite intense at first and involved complete shadowing of every docketing entry by Ms. Lyons for several months. (*Id.*) As Ms. Lyons acquired the necessary experience to carry out the docketing duties on her own, the level of day-to-day supervision of her work diminished accordingly. (*Id.*)

After Ms. Hord left Upjohn, Ms. Lyons was supervised by Mr. Welch, the head patent attorney. (*Id.* ¶ 13.) In September 1998, after Mr. Welch left Upjohn as well, Ms. Tucker became Ms. Lyons' supervisor. (*Id.* ¶ 16.) At the times relevant to this Renewed Petition, June

1996 through July 1998, Ms. Lyons had more than six years of U.S. docketing experience and at least 1-½ years of experience with the PCMaster software. Her Supplemental Declaration also describes the only other significant responsibility that Ms. Lyons had in addition to U.S. docketing, i.e., the payment of invoices from outside counsel. (*Id.* ¶ 18.)

As to checks on her work in connection with the payment of maintenance fees and annuities, the redundant systems that Upjohn had in place to “catch” any missed payments failed in this instance in a situation akin to the plot of The Perfect Storm. As detailed in the original and Supplemental Declarations of Ms. Tucker and the Supplemental Declaration of Ms. Lyons and Mr. Rehberg, Upjohn had in place a system of reviewing all notices received from the PTO and from Master Data Center. (Tucker Supp. Decl. ¶ 7; Lyons Supp. Decl. ¶ 19; Supplemental Declaration of Edward F. Rehberg ¶ 2.) In the case of the 11-½ year maintenance fee for U.S. Patent No. 4,902,683, Upjohn ordinarily would have received three notices from the PTO indicating that this fee was due, that it had not been paid and that the patent had expired, respectively. (Rehberg Supp. Decl. ¶ 2.) In addition to the PTO notices, Upjohn should have received at least one notice from Master Data Center indicating its intention not to pay this maintenance fee. (Rehberg Supp. Decl. ¶ 2; Lyons Supp. Decl. ¶ 19; Tucker Supp. Decl. ¶ 7.) As indicated in the original and Supplemental Declarations of Mr. Rehberg, Upjohn’s records have been diligently searched and there is no indication that Upjohn ever received any of these four notices. (Rehberg Supp. Decl. ¶ 2.) Had even a single of these four notices been received by Upjohn, the Supplemental Declarations of Ms. Tucker, Mr. Rehberg and Ms. Lyons confirm that they would have immediately brought the issue of this maintenance fee to the attention of the attorneys at Upjohn and made sure that the fee was paid. (Tucker Supp. Decl. ¶ 7; Rehberg Supp. Decl. ¶ 2; Lyons Supp. Decl. ¶ 19.)

Conclusion

As requested in the initial Decision, the undersigned confirms that this Renewed Petition is submitted based on a “reasonable inquiry into the facts and circumstances” of the delayed payment of the 11-½ year maintenance fee for U.S. Patent No. 4,902,683. This reasonable inquiry leads to the unequivocal conclusion that the delay in the payment of the maintenance fee was both unintentional and unavoidable. On the first point, there is absolutely no evidence that anyone at Upjohn had any intention that the fee not be paid. And with respect to unavoidability, Upjohn believes that the evidence provided in this Renewed Petition is compelling. In summary of the most significant points:

- Ms. Lyons was given incorrect instructions from the expert at Master Data Center concerning the procedure for docketing a U.S. pharmaceutical term extension request. She followed these instructions to the letter and memorialized them in the official Upjohn docketing procedures manual. As she stated in her Supplemental Declaration, “[e]ven with the benefit of 20-20 hindsight today, I do not believe I could have or should have done anything differently at the time.”
- When Ms. Lyons followed these incorrect instructions, the data base record in PCMaster gave no indication that anything was wrong, let alone that the maintenance fee would not be paid. To the contrary, everything appeared to be perfectly normal and the Next Tax Due date in the PCMaster record still reflected the correct date on which the 11-½ year maintenance fee was due.

- Unbeknownst to Ms. Lyons, her entry of the "Code J" designation in the original data base record for U.S. Patent No. 4,902,683 was the direct cause of Master Data Center not paying the maintenance fee when due.
- The training that Ms. Lyons received in the docketing of U.S. patent matters, her firsthand level of experience in handling U.S. docketing procedures and her degree of supervision were all much more than sufficient for Upjohn to reasonably rely on her to carry out the functions of U.S. Docketing Clerk.
- The "fail-safe" system of checking notices from the PTO and Master Data Center failed in this instance because there is no indication that any of the four notices that Upjohn ordinarily would have received in the normal course were ever received. Indeed the best evidence that these notices were never received is the fact that the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 was not paid, for as detailed by Ms. Lyons, Ms. Tucker and Mr. Rehberg, if even a single one of these notices had been received, the fee would have been paid at least before the expiration of the grace period.

In light of this compelling showing that the delayed payment of the maintenance fee was both unintentional and unavoidable, the PTO is respectfully requested to grant this Renewed Petition and accept the delayed payment of the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 pursuant to 37 C.F.R. §1.378(b).

Respectfully submitted,

McDonnell Boehnen Hulbert & Berghoff

Paul H. Berghoff
Paul H. Berghoff
Reg. No. 30,243

July 12, 2004
Date

PATENT



BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DECLARATION OF ELIZABETH BEVIER

I, Elizabeth Bevier, the undersigned, a citizen of the United States residing at 45 Grosse Pines, Rochester Hills, Michigan 48309, declare as follows:

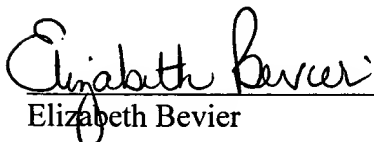
1. I have been employed by Master Data Center of Southfield, Michigan since 1976. I have held various position at Master Data Center, including Supervisor of Customer Support and now Manager of Rules Development and Support. Since 1984 I have been responsible for

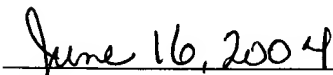
assisting clients of Master Data Center in the correct usage of PCMaster docketing software to insure the proper payment of maintenance fees and annuities in patent and trademark applications.

2. I am personally familiar with both Julie Lyons and Deborah Tucker at the Upjohn Company and its successor companies, Pharmacia & Upjohn and Pfizer. During the 1990's and continuing to the present, I have had numerous telephone conversations with both Julie Lyons and Deb Tucker concerning the correct usage of PCMaster software. As part of the service provided by Master Data Center to its clients such as Upjohn, I routinely answered questions that Deb or Julie posed to me on the telephone about particular ways to docket matters correctly using the PCMaster software.

3. I have no specific recollection of any conversation with Julie Lyons (or Deb Tucker for that matter) relating to the handling of U.S. pharmaceutical patent term extensions in PCMaster. This is hardly surprising, however, since in a typical week I often have hundreds of telephone conversations with various clients of Master Data Center.

4. I hereby declare that all statements made herein are of my own knowledge, and I believe them to be true, and further that the statements are made with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.


Elizabeth Bevier


Date



PATENT

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Title: CRYSTALLINE CEPHALOSPORIN)
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Assignee: Pharmacia & Upjohn Company)

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DECLARATION OF PAULA G. STONE

I, Paula G. Stone, the undersigned, a citizen of the United States residing at Novi, Michigan, declare as follows:

1. I have been employed by Master Data Center of Southfield, Michigan since February of 1991. Master Data Center markets commercial software under the trade name PC Master, which is used by companies and law firms throughout the United States to assist in the

appropriate docketing of the various dates associated with patent and trademark applications. In addition, Master Data Center provides the service of paying maintenance fees and annuities associated with those applications as they become due.

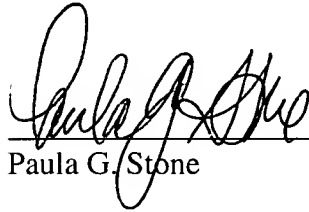
2. I have held various positions at Master Data Center, including Customer Representative, Manager, Director and now Vice President of Operations. I am responsible for ensuring the smooth operation of Master Data Center's patent annuity and trademark renewal service, including a proper calculation of maintenance fee due dates for various patent types throughout the world. I hold a Bachelor's Degree in Business Administration and a Juris Doctor degree from Wayne State University.

3. I am aware that the Upjohn Company and its successor companies, Pharmacia & Upjohn and Pfizer Corporation, have used and continue to use PCMaster software and the related services of Master Data Center in docketing patent and trademark matters. I have learned that the 11-½ year maintenance fee for U. S. Patent No. 4,902,683 was not paid on time. I have also learned that Julie Lyons at Upjohn changed the Case Type field in the original record in PCMaster for this patent from a "REGULAR CASE TYPE" to a "Code J" designation. The entry of a "Code J" designation, which corresponds to a pharmaceutical extension, results in Master Data Center not paying the maintenance fees associated with that record. The entry of a "Code J" designation in the Case Type field of the original PCMaster record for U.S. Patent No. 4,902,683 caused Master Data Center not to pay the 11-½ year maintenance fee.

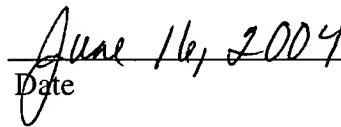
4. Rather than entering a "Code J" designation in the original PCMaster record for U.S. Patent No. 4,902,683, the appropriate procedure for docketing a U.S. pharmaceutical patent term extension would have been to create a new duplicate record for the patent and enter the "Code J" designation in the new record only, leaving the original docket record in place. This

procedure would have resulted in the timely payment by Master Data Center of the 11-½ year maintenance fee.

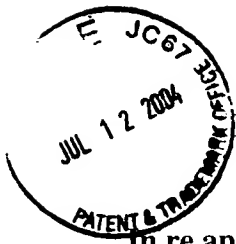
5. I hereby declare that all statements made herein are of my own knowledge, and I believe them to be true, and further that the statements are made with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.



Paula G. Stone



Date



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SUPPLEMENTAL DECLARATION OF DEBORAH A. TUCKER

I, Deborah A. Tucker, the undersigned, a citizen of the United States and residing at 1010 Miller Road, Kalamazoo, Michigan 49001 declare as follows:

1. I previously executed a Declaration in this matter dated April 1, 2004. I have read the Decision on Petition dated May 12, 2004 and am responding to the questions raised in that Decision.

2. I began working at The Upjohn Company and its successor companies (hereafter "Upjohn") in 1972. Since February, 1990, I have been responsible for docketing foreign patent applications and annuities and Julie Lyons has had the primary responsibility for U.S. docketing at Upjohn. Since then, I have not had primary responsibility for U.S. docketing.

I did not become Julie Lyons' supervisor until September, 1998. From 1990 through August, 1998, Julie and I both reported to the same person and were at the same authority level within Upjohn. From 1990 through mid January 1995, we both reported to Nancy Hord, the Docketing Supervisor. Thereafter until August 24, 1998 we both reported to Mr. Lawrence Welch, the head patent attorney. Therefore, when the pharmaceutical patent term extension for U.S. Patent No. 4,902,683 was requested in June 1996 and when that extension was granted in July, 1998, I was not Ms. Lyons' supervisor. Instead, both of us reported directly to Mr. Welch at that time.

3. Prior to the lapse of U.S. Patent No. 4,902,683 coming to my attention in 2004, I have no recollection of ever discussing the procedures for docketing patent term extensions, either U.S. or foreign, with Julie Lyons. Based on my experience as the foreign docketing clerk for Upjohn, I was well aware of the general procedure for docketing foreign patent term extensions in PCMaster. In general terms, this procedure included opening a new record, placing a "Code J" designation in the Case Type field of the new record and leaving the original record otherwise unmodified. I do not recall any conversation with Julie in which I told her the appropriate procedure for handling a U.S. pharmaceutical patent term extension. In fact, prior to 2004, I did not know the proper way to docket a U.S. pharmaceutical patent term extension using PCMaster because it was outside of my area of direct responsibility, foreign docketing.

I am very confident that I never told Julie Lyons that “the proper course of action” for a U.S. pharmaceutical patent term extension was to create a new record, place a “J” in the appropriate field and leave the original record unmodified. Because my primary responsibilities were in the docketing of foreign patent applications, I did not know at the time how a U.S. pharmaceutical patent term extension should be handled in PCMaster.

4. I attended two or three user conferences at Master Data Center in Southfield, Michigan with Julie Lyons. In addition, I attended two training workshops at Master Data Center with Julie, one basic and one more advanced. I have no recollection of U.S. pharmaceutical patent term extensions being discussed at any of these user conferences or workshops.

5. In my opinion, Julie Lyons was highly trained and skilled at U.S. patent docketing matters. During the time period when we were coworkers (from 1990 through August 1998) and since I have been her supervisor from September 1998 to the present, I have always viewed Julie as highly competent, dedicated and thorough in carrying out her primary task of docketing U.S. patent matters. Furthermore I understand that she is held in high regard and always has been at Upjohn. Even after I became her supervisor in September, 1998, I have never felt it necessary to look over her shoulder on a day-to-day basis to double-check the accuracy of her docketing. As of 1998 when I became her supervisor, Ms. Lyons had been thoroughly trained by our former supervisor, Nancy Hord, and had almost eight years of experience in docketing U.S. patent applications. In addition, in my experience, Ms. Lyons always exhibited a willingness to ask appropriate questions of the attorneys or Elizabeth Bevier at Master Data Center whenever the need arose.

6. I have had many conversations with Liz Bevier at Master Data Center concerning the detailed “rules” for using the PCMaster software. It is my understanding that she is the most

knowledgeable person at Master Data Center concerning the detailed implementation of PCMaster. I often called her over the years with questions concerning foreign docketing matters and always felt that I received clear, authoritative answers to my questions. I viewed her as the ultimate authority on the correct usage of the PCMaster docketing software.

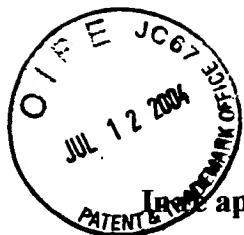
7. I do not recall ever receiving a reminder from the PTO or Master Data Center that the 11-½ year maintenance fee was coming due for U.S. Patent No. 4,902,683. Similarly, I do not recall ever having received a notice from the PTO or Master Data Center that the 11-½ year maintenance fee for this patent had not been paid or that the patent had lapsed. Had I received any such notice, I would have notified Ms. Lyons and one or more supervising patent attorneys at Upjohn of the situation and would have taken steps to be sure that the maintenance fee was paid. I believe that the failure to pay the 11-½ year maintenance fee was unintentional and unavoidable.

8. I hereby declare that all statements made herein are of my own knowledge, and I believe them to be true, and further that these statements are made with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Deborah A. Tucker
Deborah A. Tucker

7-6-2004
Date

PATENT



BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor application of:

Mahendra I. Amin, et al

Application No. 07/312,401

Patent No.: 4,902,683

Filed: February 17, 1989

Issue Date: February 20, 1990

Attorney Docket No.: 4121FW1

**Title: CRYSTALLINE CEPHALOSPORIN
HYDROHALIDE SALTS**

Assignee: Pharmacia & Upjohn Company

**Mail Stop: Petition
Commissioner of Patents
Please deliver to Paul Shanowski,
c/o Office of Petitions
P. O. Box 1450
Alexandria, VA 22313-1450**

SUPPLEMENTAL DECLARATION OF JULIE K. LYONS

I, Julie K. Lyons, the undersigned, a citizen of the United States and residing at 6797 Country View Drive, Kalamazoo, Michigan 49009, declare as follows:

1. I previously executed a Declaration in this matter dated April 1, 2004. I have read the Decision on Petition dated May 12, 2004 and am responding in this Supplemental Declaration to the questions raised in that Decision on Petition as best I can.

2. It is clear that the U.S. Patent and Trademark Office ("PTO") would like a more complete description of how I docketed this patent. Regarding the pharmaceutical patent term extension, I would have accessed the data base record for U.S. Patent 4,902,683 on two occasions. First, I would have called up the record at the time that the request for a pharmaceutical term extension was applied for in June 1996. Second, I also would have accessed the data base record around the time that the pharmaceutical extension was granted in July 1998. Since July 1998 until the failure to pay the 11-½ year maintenance fee came to my attention in 2004, I would have had no reason to access this file and do not recall doing so.

3. I have reviewed the archived PCMaster data base that was in use at The Upjohn Company and its successor companies (hereafter referred to as "Upjohn") during the relevant time period from June, 1996 through July, 1998. Attached as Exhibit A is a copy of a screen from the data base record for U.S. Patent No. 4,902,683. The top half of this screen shows the Upjohn docket number 4121. The record indicates that it is an original U.S. patent case and lists the current owner as The Upjohn Company. The top half of this screen also indicates that the case type is a Pharmaceutical Extension. In the lower half of this screen, the status of the case is shown as granted and the expiration date is shown as May 25, 2008, which is the extended expiration date granted on July 15, 1998. Also, the next tax date is shown as August 20, 2001, the final date on which payment of the 11 ½ year maintenance fee was due without surcharge

4. Attached as Exhibit B is a series of four screens from the data base record for this patent showing all of the selections available in the drop down menu for the Case Type field. Specifically, PCMaster allowed all of the Case Type designations in the table below to be entered.

Code	Description
	REGULAR CASE TYPE
B	Reexamination
C	Confirmation/Pipeline
D	DESIGN
E	SIMILAR DESIGN
F	DEFENSIVE PUBLICATION
G	Reformulation
H	AUXILARY UTILITY MODEL
I	IMPORTATION
J	PHARMACEUTICAL EXTENSION
K	Pli Soleau
L	PROVISIONAL FILING
M	TERMINAL DISCLAIMER
N	CAUTIONARY NOTICE
O	Opposition
P	PHARMACEUTICAL PATENT
Q	PLANT VARIETY (SEXUALLY PRODUC
R	REISSUE PATENT
S	SHORT TERM PATENT
T	PLANT PATENT (ASEXUALLY PRODU
U	UTILITY MODEL
V	INVENTORS CERTIFICATE
W	CONVERTED UTILITY MODEL
X	SECRECY ORDER
Y	COPYRIGHT
Z	RE-REGISTRATION

As shown on Exhibit A, the Case Type field for the patent in question was entered as “Code J” for Pharmaceutical Extension.

5. Elizabeth Bevier was in the Client Services Group at Master Data Center and was my primary contact at Master Data Center for questions regarding the proper use of PCMaster software. I spoke with Liz Bevier over the years in connection with my duties as the U.S. Docketing Clerk for Upjohn. It was always my understanding that Liz was the person most knowledgeable at Master Data Center concerning the correct docketing of applications using the

PCMaster software. She was always very helpful and knowledgeable in responding to my questions. I would typically call Liz whenever I had a question about the appropriate method of making a specific docket entry in PCMaster. Though my conversations with her did not follow a regular schedule, in a typical year I recall having about three or four conversations with her about docketing procedures.

6. After reviewing the records at Upjohn for U.S. patents that have been granted a pharmaceutical term extension, I believe that U.S. Patent No. 4,902,683 was one of the first such extension requests that I handled. I have a specific recollection of telephoning Liz Bevier the first time I had to docket a pharmaceutical patent term extension. I now believe that this conversation took place, at the latest, in June, 1996 in connection with this patent, or perhaps six or so months earlier in connection with another Upjohn patent. I recall asking Liz for an instructional sheet telling me how to handle U.S. pharmaceutical patent extensions. Her response was that I didn't need an instructional sheet. Instead, she told me that "you just add a 'J' to the record." Since I knew at the time that Deborah Tucker, who was responsible for foreign patent docketing at Upjohn, typically opened up a second record to docket foreign patent term extensions, I asked Liz during this conversation if that was necessary for U.S. cases as well. She told me that I didn't need to open up a second record for a U.S. case. All I needed to do was add a "J" to the record and go to the Actions screen and put in a PEX designation once the extension was granted, which would then allow me to manually change the expiration date. I thanked Liz for her help.

7. Based on the instructions I received from Liz Bevier at Master Data Center, I did not create a duplicate data base record for this patent. Instead, I entered a "Code J" designation corresponding to a pharmaceutical extension in the Case Type field in the original record. Changing the Case Type to "Code J" did not generate any indication or message in the data base

record that future maintenance fees would not be paid by Master Data Center when they came due.

8. Again, following Liz Bevier's instructions, when the pharmaceutical extension request was granted in July, 1998, I would have accessed the record for this case and entered a PEX designation in the Actions screen. Attached as Exhibit C is a copy of the Actions screen for this case. This screen shows the action "EXTENDED", which corresponds to the PEX designation that I discussed with Liz Bevier, and indicates a completed date of July 17, 1998. When I entered the PEX designation in this record in July, 1998, the data base software prompted me to manually change the expiration date. I then did so to the new extended date of May 25, 2008, as shown on Exhibits A and B.

9. When I accessed this record in June 1996 and again in July 1998, nothing in the record indicated to me that Master Data Center would not pay the 11-½ year maintenance fee. To the contrary, everything in the data record appeared to be consistent and correct with respect to the indicated due date for payment. As I mentioned above, the next tax date continued to be correctly indicated as August 20, 2001 even after entry of the "Code J" designation.¹ Furthermore, the data base record continued to indicate the status of this case as granted. Attached as Exhibit D is a copy of the screen showing the pull down menu for "Status." Exhibit D shows that there were four choices, one of which was Code I for an inactive case. My entry of the "Code J" designation in the Case Type field did not alter the status field of this record from being "granted." Therefore, based on: 1) my conversation with Liz Bevier, whom I regarded at

¹ The Next Tax Date field in the data base record for U.S. Patent No. 4,902,683 has a "#" sign after the date of August 20, 2001, as shown in Exhibits A, B and D. It is my understanding that this "#" sign is automatically generated by the PCMaster software and indicates that this date was automatically updated based on a standard rules update. The "#" symbol does not indicate in any way that the maintenance fee will not be paid by the indicated tax due date of August 20, 2001.

the time (and still regard) as the person most knowledgeable about the correct usage of PCMaster software, and 2) the fact that after following her instructions, nothing in the data base record raised any type of red flag concerning the appropriateness of my actions in docketing the pharmaceutical patent term extension, it was always my belief during the relevant time period that the maintenance fee would be paid by Master Data Center by the indicated due date. I continued to hold this belief until I became aware of the lapse of the patent in 2004.

10. Based on the conversation that I had with Liz Bevier concerning U.S. pharmaceutical patent term extensions, I memorialized her instructions in the U.S. Docketing Procedures Manual that I updated and maintained on behalf of Upjohn. I attached a copy of this Procedures Manual to my earlier Declaration. The section concerning pharmaceutical patent term extensions appears on page 24 of the Manual and is fully consistent with the instructions I received from Liz. Specifically, the Procedures Manual states that "if patent is ours [i.e., Upjohn's], add case type 'J' to the existing record." Additionally, the Procedures Manual states that "[w]hen an extension is granted, add action code PEX. This will notify the system that the extension has been granted. Then manually type in new expiration date. The tax base date and next tax date will remain unchanged." I believed that these instructions were correct when I entered them into the U.S. Docket Procedures Manual and I followed these procedures with respect to each of the pharmaceutical patent term extensions obtained by Upjohn during my tenure as U.S. Docketing Clerk prior to the lapse of this patent coming to my attention in 2004.

11. In the Decision on Petition, the PTO raised a question concerning the sufficiency of my training and experience with respect to the docketing of U.S. patent applications as of the relevant time period from June, 1996 through July, 1998. The foundation of my training began in 1980 through 1990 when I worked as an administrative assistant to various patent attorneys at

Upjohn. During these ten years as an administrative assistant, I helped prepare and became very familiar with the types of filings and papers associated with U.S. patent applications as well as their foreign counterparts. I also became quite familiar with the many due dates that need to be docketed for U.S. patent applications and the importance of accurately docketing all due dates.

In February, 1990 I became the U.S. Docketing Clerk at Upjohn and reported to Nancy Hord, who was the head of docketing at Upjohn. Nancy was very experienced and knowledgeable in docketing matters, both U.S. and foreign. She had been responsible for U.S. docketing at Upjohn since 1982 and became the supervisor of all docketing in 1984. Nancy personally trained me on the proper docketing of U.S. matters according to Upjohn practice. I specifically remember that for my first two months or so in my new position, Nancy and I did everything together. Each morning we would open the mail together and identify all U.S. papers that required docketing. I would then tell Nancy what I proposed to do with each item. We would then discuss it and I would make the docketing entry that Nancy agreed was correct while Nancy watched. This detailed personal training went on each business day for approximately two months and resulted in my being thoroughly familiar with the proper docketing of U.S. patent matters. Following these two months of intensive training, Nancy Hord continued to interact with me numerous times each day throughout 1990 and well into 1991, to directly supervise my docketing activities and to be sure that I was appropriately trained in the handling of U.S. docketing matters.

In February, 1990 when I became U.S. Docketing Clerk, Upjohn was using a docketing software program by the name of Data Ease, which was supplied by a vendor different than Master Data Center. I recall attending training sessions in Rockville, Maryland at the vendor's headquarters concerning the proper use of Data Ease. In addition, I recall the vendor's

representatives coming to Kalamazoo to train me and others concerning the appropriate use of the software. I specifically recall that even though my supervisor at the time, Nancy Hord, was very experienced in U.S. docketing, she always deferred to the software vendor when it came to particular implementation questions concerning Data Ease because the vendor knew its software better than anyone else.

After 1991, Nancy Hord continued to supervise my work as the U.S. Docketing Clerk, though her interactions with me became less frequent because she and I believed that I had sufficient training and experience to properly docket U.S. patent application files on my own. Part of my training from Nancy Hord was that I should not engage in "interpretation" in docketing. If an issue were gray in any respect, I was trained to seek guidance from the most knowledgeable person. Specifically, I was trained to ask one of the attorneys, preferable the head patent attorney at Upjohn, concerning any legal issues. And with respect to issues related to the docketing software and its implementation, I was trained to directly contact the experts at the software vendor for clarification. I have followed this principle in carrying out my U.S. docketing duties from 1990 to the present date.

12. In December, 1994, Upjohn switched software vendors and began using PCMaster software as its docketing software instead of Data Ease. Around that time, representatives from Master Data Center came to Kalamazoo and presented a series of training sessions for the attorneys and staff. I participated in these training sessions, which I believe lasted at least two days, and became generally familiar with the use of the PCMaster software.

Apart from these initial training sessions, I received additional training from Master Data Center in two different formats. Subsequent to 1995, Deb Tucker and I attended two or three of the annual user conferences hosted by Master Data Center at its headquarters in Southfield,

Michigan. These user conferences were typically at least two days in length and covered a variety of topics relating to docketing and PCMaster. They included lectures, hands-on training sessions, breakout sessions on specific topics and question and answer opportunities. Though these user conferences provided information and training on a wide variety of subjects relating to docketing, both U.S. and foreign, I do not recall the specific topic of U.S. pharmaceutical patent extensions ever being addressed at one of these conferences.

In addition to the user conferences, Master Data Center provided intensive training sessions in Southfield on an ongoing basis. Though I do not recall specific dates, I know that both Deb Tucker and I went to Master Data Center's headquarters in Southfield, Michigan on two separate occasions in order to complete both the Basic training session and the Advanced training session offered by Master Data Center. Again, I do not recall U.S. pharmaceutical patent extensions ever being addressed at either of these training sessions.

13. Nancy Hord left Upjohn in January, 1995, shortly after the implementation of PCMaster. At that point, Deb Tucker and I directly reported to and were directly supervised by the head patent attorney, Lawrence T. Welch. Mr. Welch was an experienced patent attorney and was especially knowledgeable about patent prosecution matters, both U.S. and foreign. Mr. Welch remained my supervisor until he left Upjohn on August 24, 1998 for his current position at Eli Lilly. Thus, Mr. Welch was my direct supervisor during the entire relevant time period from June 1996 through July 1998.

While we reported to Mr. Welch, both Deb Tucker and I talked with him frequently about various legal issues that arose in connection with docketing. My recollection is that we typically met with Mr. Welch on a daily basis during this period and sometimes more frequently as the need arose. Mr. Welch was the person I went to with any legal questions concerning the appropriate

handling of U.S. patent applications. However, during this time frame as well, when I had questions concerning the appropriate implementation of the PCMaster software, I always contacted Liz Bevier at Master Data Center, who I regarded the person most knowledgeable about the docketing software and its correct usage. Deb Tucker became my supervisor in September, 1998. However, even then, when I had questions concerning U.S. docketing matters, I would call Liz Bevier if they were software related.

14. I believe that I was well trained for carrying out my duties as U.S. Docketing Clerk at Upjohn, both by my initial supervisor, Nancy Hord, and by Master Data Center. I also believe that I was appropriately supervised during my entire tenure as U.S. Docketing Clerk. However, even with the best training and supervision, questions and issues requiring interpretation always come up from time to time. When they did, such as in the current example of a pharmaceutical patent term extension, I always made sure that I understood the appropriate docketing procedure by discussing it with the most knowledgeable person. I followed my training in this regard when the pharmaceutical term extension relating to U.S. Patent No. 4,902,683 came across my desk and I contacted Liz Bevier, as I have already described above. Even with the benefit of 20-20 hindsight today, I do not believe I could have or should have done anything differently at the time. The bottom line is that I was given the incorrect information concerning how to docket a U.S. pharmaceutical patent extension by the most knowledgeable person at Master Data Center.

15 The Decision on Petition from the PTO indicates that I “was told by [my] supervisor at Upjohn that the proper course of action was to have created a new record, place a “J” in the appropriate field, and leave the original record unmodified.” This statement is not correct.

16 Deb Tucker did not become my supervisor until September, 1998. During the time that Deb Tucker has been my supervisor, I took no action with respect to the data base record for this patent. Instead, I did not access the data base record for U.S. Patent No. 4,902,683 subsequent to July 1998, until 2004 when the lapse of the patent was brought to my attention. To the best of my recollection, Deb Tucker never told me that the proper course of action in a U.S. case was to create a new record with the "J" designation, leaving the original record unmodified. Instead, Deb had told me that for foreign patent term extensions, this was the procedure that she followed based on instructions from Master Data Center. Deb Tucker's expertise was in docketing foreign applications, while my expertise was in docketing U.S. applications. While Deb Tucker was well versed in the proper docketing of foreign patent term extensions, I am unaware that she had received any "conflicting" information from Master Data Center or anyone else concerning the appropriate handling of a U.S. pharmaceutical patent term extension in PCMaster.

17. The Decision on Petition asks what other Upjohn employees had access to the PCMaster program during the relevant time. While I was the only employee at Upjohn with the duty of insuring that all appropriate entries were made in the docketing system with respect to U.S. patent files, both Deb Tucker and Kathryn Adamson had access to the data base during the relevant time period from June, 1996 through July 1998. As mentioned above, Deb Tucker had access to the data base in order to docket foreign patent applications. Kathryn Adamson was the person at Upjohn responsible for trademark docketing. Other than the three of us, access to the PCMaster data base was password protected. While attorneys at Upjohn could access the data base in order to view information, the attorneys' access was on a read-only basis. Only Deb Tucker, Kathryn Adamson and I had the passwords necessary to alter data base records.

18. The Decision on Petition also inquired as to examples of other work functions carried out by me. As already mentioned, my primary duty in the relevant time period was the docketing of U.S. patent files. In addition to this function, I handled the payment of invoices from outside counsel, both U.S. and foreign, who were handling the prosecution of patent applications for Upjohn.

19. I never received a notice from the PTO indicating that the maintenance fee for U.S. Patent No. 4,902,683 was due or that U.S. Patent No. 4,902,683 had expired. I never received a notice from Master Data Center that it would not be paying or had not paid the 11-½ year maintenance fee due on August 11, 2002. Had I received any such notice, I would have immediately brought it to the attention of my supervisor and the head patent attorney at Upjohn and would have made sure that the maintenance fee was paid.

20. The failure to pay the 11-½ year maintenance fee for U.S. Patent 4,902,683 was entirely unintentional and unavoidable. I now understand that the failure to pay the maintenance fee was due to my entry of a "Code J" designation in the Case Type field in the data base record for this patent. I entered the "Code J" designation in good faith reliance on the instructions I received from Liz Bevier at Master Data Center. I believe that my good faith belief in the correctness of these instructions is reflected in my inclusion of this same procedure in the U.S. Docketing Procedures Manual that I updated and maintained at Upjohn. I never knew at the relevant time that a "Code J" designation would cause Master Data Center not to pay any maintenance fees shown as due in the data base record. Nothing in the data base record or anything else led me to suspect that the 11-½ year maintenance fee would not be timely paid.

21. I hereby declare that all statements made herein are of my own knowledge, and I believe them to be true, and further that these statements are made with the knowledge that willful

false statements so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Julie K. Lyons
Julie K. Lyons

July 7, 2004
Date

Exhibit A

PCMaster v3.02 - Pharmacia & Upjohn - (Patent)

File Edit Records Utilities Help

Docket Number: 4121
 Country: United States
 Case Type: PHARMACEUTICAL EXTENSION
 Relation Type: ORIGINAL OR PATENT CASE
 Filing Type: NATIONAL CASE
 Filing Number:

Attorney: John H. Engelmann
 Agent:
 Client/Division: Associated Business, Animal I
 Current Owner: THE UPJOHN COMPANY
 Previous Owner:

CRYSTALLINE CEPHALOSPORIN HYDROCHLORIDE SALTS (EXCENEL)

Inventor:
 Filing Date:
 Status: GRANTED CASE
 Sub Status:
 Parent Country: United States
 Parent Number: 4902683
 Total Claims:
 Application Number: 07/312401
 Patent Number: 4902683
 Publication Number:
 Assigned:
 Convention Type:

Other No's:
 Related Id:
 Title:
 Expenses:
 Fee:
 End Fee:

First Filing Date: 250C1984
 Sub Status Date:
 Parent Filing Date: 250C1984
 Parent Grant Date:
 Ind. Claims/Designs:
 Application Date: 17FE1999
 Grant Date: 20FE1990
 Publication Date:
 Expiration Date: 25MY2008
 Tax Base Date: 20AU1990
 Next Task Date: 20AU2001

Created: 140C1998 Updated: 22FE2002 1:31 PM 8/1/04

Start Stop Print Preview Find Help

2:33 PM

Exhibit B-1

Patent Manager v3.02 - Patent Manager (Patent)

File Edit View Options Help

Patent Number: 4121 Attorney: John N. Engelmann
 Country: United States Agent:
 Case Type: Special Utility Model Client/Owner: Associated Business, Animal
 Version Type: Code Description: NE UPJOHN COMPANY
 Filing Type: REGULAR CASE TYPE
 Filing Number: Confirmation/Produce
 DESIGN
 SIMILAR DESIGN
 DEFENSIVE PUBLICATION
 Reformulation
 AUXILIARY UTILITY MODEL

GRANTED CASE
 Status: GRANTED CASE
 Sub-Status:
 Patent Country: United States
 Patent Number: 4902683
 Total Claims:
 Application Number: 07/312401
 Patent Number: 4902683
 Publication Number:
 Assignee:
 Correspondence:

First Filing Date: 290C1984
 Sub-Status Date:
 Patent Filing Date: 290C1984
 Patent Grant Date:
 Sub-Status/Example:
 Application Date: 17FE1989
 Grant Date: 20FE1990
 Publication Date:
 Expiration Date: 25MY2008
 Last Date Date: 20AU1990
 Next Fee Date: 20AU2001B

Patent 4902683 Status GRANT 1990 4902683

4121	United States	John H. Engstrom
Code	Description	Associated Business, Animal
1	IMPORTATION	THE GRUBBN COMPANY
2	PROVISIONAL FILING	
3	TERMINAL DISCLAIMER	
4	CALIFORNIA NOTICE	
5	Division	
6	PHARMACEUTICAL PATENT	

GRANTED CASE	250C1984
United States	250C1984
4902683	
07/312401	17FE1989
4902683	20FE1990
	25MY2000
	20AU1990
	25AU2001

Exhibit B-2

Exhibit B-3

Pharmacia & Upjohn (Patent) - 2000-01-01

Buckets Number	4121	Attorney	John H. Engelmann
Country	United States	Agent	
Cash Type	Associated Business Animal	Classification	Associated Business Animal
Potential Type	Code Description	ME UPJOHN COMPANY	
Filing Type	Q PLANT VARIETY (SEXUALLY PRODUCE)		
Filing Method	R REISSUE PATENT		
	S SHORT TERM PATENT		
	T PLANT PATENT (ASEXUALLY PRODUCED)		
	U UTILITY MODEL		
	V INVENTORS CERTIFICATE		
	W CONVERTED UTILITY MODEL		
	X SECRECY ORDER		

Document	Category	Priority	Publication	Type	Date
Status	GRANTED CASE	First Filing Date	250C1984		
Sub Status		Sub Status Date			
Parent Country	United States	Parent Filing Date	250C1984		
Parent Number	4902583	Parent Grant Date			
Total Claims		Int. Class. Group			
Application Number	07/312401	Application Date	17FE1989		
Patent Number	4902583	Grant Date	20FE1990		
Publication Number		Publication Date			
Assignee		Expiration Date	29MY2008		
Correspondence		Fee Status Date	20AU1990*		
		Next Fee Date	20AU2001*		

Exhibit B-4

PCMaster 3.02 - Pharmacia R. Ingels - (Patent) 11/11/98

File Edit View Options Database Help

Bucket Number: 4121 Attorney: John H. Engolmann

Country: United States Agent:

Case Type: ~~PHARMACEUTICAL~~ Chemical/Genetic Associated Business, Animal Use

Relation Type: Code Description

Filing Type: S SHORT TERM PATENT

Filing Number: I PLANT PATENT, (ASEQUALY PRODU

U UTILITY MODEL

V INVENTORS CERTIFICATE

W CONVERTED UTILITY MODEL

X SECRECY ORDER

Y COPYRIGHT

Z RE REGISTRATION

ME UPJOHN COMPANY

STATUS: GRANTED CASE

Sub Status:

Patent Country: United States

Patent Number: 4902683

First Filing Date: 250C1984

Sub Status Date:

Patent Filing Date: 250C1984

Patent Grant Date:

First Claims/Design:

Application Number: 07/312401

Application Date: 17FE1989

Patent Number: 4902683

Grant Date: 20FE1990

Publication Date:

Expiration Date: 25MY2008

Assignment:

First Exam Date: 20AU1990*

Commission Type:

Next Exam Date: 20AU2001*

Printed: 11/11/98 11:00 AM 11/11/98 11:00 AM

Exhibit C

PCMaster v3.02 - Pharmacia Upjohn - Patent
File Edit Records Update Help

Docket Number: 4121
Country: United States
Case Type: PHARMACEUTICAL EXTENSION
Relation Type: ORIGINAL OR PATENT CASE
Filing Type: NATIONAL CASE
Filing Number:

Attorney: John H. Engelmann
Agent:
Client/Division: Associated Business, Animal
Current Owner: THE UPJOHN COMPANY
Previous Owner:

CRYSTALLINE CEPHALOSPORIN HYDROHALIDE SALTS (EXCENEL)

Inventors:

License:

Owner's Action:

Related Id:

Title:

Ext. File:

Filing Date:

Related Party Info:

Date:

Deadline Date:

Completed Date:

Responsible Atty:

Action	Action Due Date	Taken Date	Deadline Date	Completed Date	Responsible Atty
ISSUE FEE DUE				01DEC1999	81
EXTENDED				17JUL1999	

Generated: 14DEC1998 1:57 Updated: 22FEB2002 1:51 PM By: JHL

Start

2:34 PM

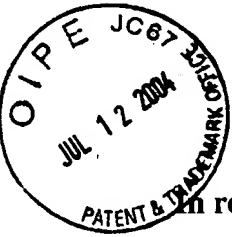
0121	United States	John H. Engemann
PHARMACEUTICAL EXTENSION	ORIGINAL OR PATENT CASE	Associated Business, Animal I
NATIONAL CASE		THE URGON COMPANY

Case No.	Description	Case No.
50C1984	DOCKETED CASE	50C1984
FILED CASE		
INACTIVE CASE		
07/31/2401		17FE1989
4902683		25FE1989
		26MY2003
		20JUL1990
		20JUL2001

Exhibit D

PATENT

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of:

Mahendra I. Amin, et al

Application No. 07/312,401

Patent No.: 4,902,683

Filed: February 17, 1989

Issue Date: February 20, 1990

Attorney Docket No.: 4121FW1

Title: CRYSTALLINE CEPHALOSPORIN
HYDROHALIDE SALTS

Assignee: Pharmacia & Upjohn Company

Mail Stop: Petition
Commissioner of Patents
Please deliver to Paul Shanowski,
c/o Office of Petitions
P. O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL DECLARATION OF EDWARD F. REHBERG

I, Edward F. Rehberg, the undersigned, a citizen of the United States and residing at 8969
W. R Avenue, Kalamazoo, Michigan 49009 declare as follows:

1. I previously executed a Declaration in this matter dated April 1, 2004. I have read
the Decision on Petition dated May 12, 2004.

2. As I stated in my previous Declaration, I thoroughly searched the files in both Kalamazoo, Michigan and in Morristown, New Jersey for notices that The Upjohn Company and its successor companies (hereafter referred to as "Upjohn") should have received from the U.S. Patent and Trademark Office ("PTO") and from Master Data Center concerning the 11-½ year maintenance fee for U.S. Patent No. 4,902,683. Specifically, I looked for and could not find the following four notices, which Upjohn should have received in the normal course: PTO Maintenance Fee Statement (PTOL-441), PTO Maintenance Fee Reminder form (PTOL-440), PTO Notice of Expiration (PTOL-441) and notice from Master Data Center that it would not be paying the maintenance fee. Had Upjohn received any one of these notices concerning the 11-½ year maintenance fee due for U.S. Patent No. 4,902,683, I believe that Upjohn would have taken the necessary steps to pay the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 no later than the expiration of the grace period. It is my belief that the failure by Upjohn to pay the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 was unintentional and unavoidable.

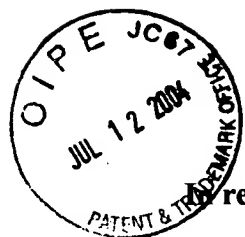
3. I hereby declare that all statements made herein are of my own knowledge, and I believe them to be true, and further that these statements are made with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.


Edward F. Rehberg

7-07-04
Date

PATENT

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE



Before application of:

Mahendra I. Amin, et al

Application No. 07/312,401

Patent No.: 4,902,683

Filed: February 17, 1989

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**Title: CRYSTALLINE CEPHALOSPORIN
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Assignee: Pharmacia & Upjohn Company

**Mail Stop: Petition
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P. O. Box 1450
Alexandria, VA 22313-1450**

SUPPLEMENTAL DECLARATION OF THOMAS A. WOOTTON

I, Thomas A. Wootton, the undersigned, a citizen of the United States and residing at 6369 Whitney Woods, Richland, Michigan 49083 declare as follows:

1. I previously executed a Declaration in this matter dated April 1, 2004. I have read the Decision on Petition dated May 12, 2004.

2. As I stated in my previous Declaration, I have been a patent attorney at The Upjohn Company and its successor companies (hereafter referred to as "Upjohn") since 1991 and am currently the Group and Site Leader of the Kalamazoo Intellectual Property Department. In my opinion, Julie Lyons was highly trained and experienced in the correct docketing of U.S. patent matters such that it was reasonable for Upjohn to have relied on her to carry out her duties as U.S. Docketing Clerk. Julie was very familiar with U.S. patent files and the importance of due dates both from her many years in the patent department as an administrative assistant for Upjohn and from her many years as a Docketing Clerk. In addition, she received thorough training upon assuming the responsibility for U.S. docketing at Upjohn. She also received substantial training from Master Data Center concerning the correct usage of PCMaster after Upjohn began using PCMaster in December 1994. Julie has always been viewed by me and others at Upjohn as a highly conscientious, competent and trusted employee. She was the most knowledgeable and experienced person at Upjohn concerning U.S. docketing procedures.

3. Julie Lyons has always been adequately supervised during her tenure as U.S. Docketing Clerk, first by Nancy Hord, then by Lawrence Welch, Esq. and currently by Deborah Tucker. In addition, Upjohn, through its contractual agreements with Master Data Center, made sure that Julie had access at all times to the experts at Master Data Center concerning the correct implementation of the PCMaster docketing software.

4. With respect to the payment of patent maintenance and annuity fees, Upjohn had systems in place to carefully crosscheck all fees due to be sure that all fees were paid, unless the decision had been made to abandon a given case. With respect to U.S. Patent No. 4,902,683, Upjohn should have received four notices advising it that the 11-½ year maintenance fee was due or had not been paid – three from the U.S. Patent and Trademark Office and one from Master

Data Center. Had any one of these notices been received by Upjohn, I am certain that the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 would have been timely paid at least by the expiration of the grace period. At my direction, Mr. Rehberg searched Upjohn's relevant files for these notices and could find no evidence that Upjohn ever received any of them. It is my belief that the failure by Upjohn to pay the 11-½ year maintenance fee for U.S. Patent No. 4,902,683 was unintentional and unavoidable.

5. I hereby declare that all statements made herein are of my own knowledge, and I believe them to be true, and further that these statements are made with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.


Thomas A. Wootton

7 July 2004
Date

INITIAL SCREENING OF INCOMING PAPERS CHECKLIST

Reviewer: AC Chase

Date: 7/15/04

APPLICATION NO. 4902683 - 07/312401 - 01

1. PETITION TYPE CODE

☐ R137(a) Petition-----501

☐ R137(a) Petition-----509
(Issue Fee/Dwgs)

☐ R137(b) Petition-----502

☐ R137(b) Petition-----510
(Issue Fee/Dwgs)

☐ R137(f) Petition-----536

☐ R182 Petition-----519

☐ R183 Petition-----503

☒ R378(b) Petition-----532

☐ R378(c) Petition-----533

☐ R377 Petition-----521

☐ R3.81(b) Petition-----523

☐ R181 Petition-----515

☐ R181 Petition-----504

PETITION TYPE CODE

☐ R28c Petition-----321/320

☐ R47 Petition-----313

☐ R53(e) Petition-----408

☐ R53 (R62 filing date)----410

☐ R10 Petition-----411

☐ Lost Application-----412

☐ R78(a)(3) Petition-----535

☐ R78(a)(6) Petition-----535

☐ R55(c) Petition-----535

☐ R314 Petition-----508

☐ R55(a) Petition-----507

☐ Pet. W/D Abn-----525

☐ R705(b) PTA-Bef iss-----550

☐ R705(d) PTA-Aft iss-----551

☐ R705(c)PTA-SpiteDueCare-552

☐ Other_____

2. LIST PAPERS FILED WITH PETITIONS

<input type="checkbox"/> PreAmdt/Amdt	<input type="checkbox"/> CPA	<input type="checkbox"/> Associate POA
<input type="checkbox"/> Request CofC	<input type="checkbox"/> RCE	<input type="checkbox"/> Change of Address
<input type="checkbox"/> Reply/Arguments	<input type="checkbox"/> IDS	<input type="checkbox"/> Revocation/Poa
<input type="checkbox"/> Election	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Oath/Decl. & POA
<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Issue Fee	<input type="checkbox"/> Priority Documents
<input type="checkbox"/> Brief (3)	<input type="checkbox"/> Drawings	<input type="checkbox"/> Statement 3.37(b)
<input type="checkbox"/> Reply Brief	<input type="checkbox"/> Rule 312 Amdt	<input type="checkbox"/> Rescind Non-Pub Req.
<input type="checkbox"/> Declaration R132	<input type="checkbox"/> Ext Time ()	<input type="checkbox"/> Notice of Foreign Filing

Other Papers Return file to Paul Shanowski

3. Is paper a petition to withdraw holding of abandonment: yes no
If so, send paper and/or file to appropriate location (Note: remove any flag set first):

- a. Nonreceipt of action from TC or assertion that reply was timely filed:
Send paper to TC _____
- b. Nonreceipt of Missing Parts Notice or assertion that reply was timely filed:
Send paper to DIRECTOR -OIKE - -CP2-7D25 (PH: 308-0910)
- c. Assertion of timely payment of issue fee and/or submission of drawings:
Send petition to Office of Publications: ATTN: Tom Hawkins
- d. Other _____

4. Other: _____
If not handled in Office of Petitions, send paper to appropriate location.

5. Is petition accompanied by assignment papers, fee address, or other paper which needs to be sent to another location? yes no If so, make copy of assignment papers, fee address, or other paper; mail original to proper location and place copy in file with an indication that the original paper(s) has been forwarded to the appropriate location (Assignment Branch; Maintenance Fee Division, etc.)